



TOWN OF WEST BOYLSTON PLANNING BOARD planningboard@westboylston-ma.gov
140 Worcester Street * West Boylston MA 01583 * Phone 774-261-4073

PUBLIC HEARING MEETING MINUTES

90 Sterling Street

December 14, 2016

Chairman: Christopher Olson

Members Present: Vincent Vignaly, Marc Frieden, Barur Rajeshkumar, Cheryl Carlson

Members Absent: None

Others Present: See Attached Sign-In Sheet

All documents referenced in these Minutes are stored and available for public inspection in the Planning Board Office located at 140 Worcester Street.

Before opening the Public Hearing, Mr. Olson asked if there were any issues/comments regarding the composition of the board since DCR was notified of the hearing and Mr. Vignaly is employed by DCR. Mr. Peznola said they do not have any objections to Mr. Vignaly remaining.

The Chair opened the Public Hearing at 8:15 p.m. Mr. Vignaly read into record the Notice of Public Hearing which was published in the Telegram & Gazette on November 30th and December 7th. Tear sheets and green card abutter notifications were received. Joe Peznola (Hancock Associates) was present.

The site is the former Reservoir Motel which is made up of two buildings on site (a three-story and a two-story) containing a total of 39 motel rooms and a manager's apartment. There is a large paved parking area and a pool. There are two entrances onto Sterling Street. The south entrance is shared with an easement with the condominiums. The entrance to the north is a steep grade into the parking lot. The existing lot has a sewer ejector pump and connection to the municipal water and all other ancillary utilities. The project proposed is an 8 building, 16 three-bedroom unit duplex condominium project. They will be closing off the north entrance, utilizing the south entrance as the primary access, and having a parking lot between the two rows of buildings. Regarding the setback, they went to the ZBA under an application for a special permit for modification, change or alteration of non-conforming use, structure. They were originally proposing 24 units; the Board of Appeals approved the special permit for 16 units without asking for a plan depicting the 16 units. The ZBA only conditioned that they were allowed 16 units. They are proposing to create a middle plateau, steep embankment; the balance will be on the sides of the units. It fits in with topography, allows them to keep the existing curb cut and there is no need to relocate any utility poles. They are proposing 40 parking spaces. They will use the existing pump in the back and will have to relocate the force main. They are proposing a comprehensive drainage system of catch basins collecting rain water in the parking, draining it down to a treatment and recharge system. They are decreasing the amount of impervious area and will comply with DEP Stormwater Standards. They will be upgrading the system and

bringing gas utilities in the homes. The units will be two-story with a basement and front porch, 3-bedroom, 1.5 bath.

Mr. Olson asked about traffic issues. Mr. Peznola said currently the driveway is used as a cut-through from Sterling to Lancaster Street. There was some discussion about closing it off. They are not proposing anything with it but are open to working with the board for a solution. The aisle width is 24'; the parking spaces are 9x19. Mr. Vignaly asked about soil testing and recharge. Mr. Peznola said they want to put the recharge component under the existing two-story unit, so testing is difficult before demolition occurs. He would be comfortable a condition because they are reducing the amount of impervious and have to meet the stormwater standards to the degree practicable; they have to provide treatment and do their best at recharge. Regarding patios, are they impervious; yes. Mr. Vignaly referenced the ZBA paperwork. They limited the project to 16 units but did not limit the number of bedrooms in each one. Mr. Peznola said they had discussions with the board regarding bedrooms with 24 units. There was no discussion with 16 units and there is nothing in the decision. The underlying premise here to the special permit for modification, change or alteration of a legal non-conforming use, is to recognize the intrinsic value of a legal non-conforming use or structure. It has more value than the underlying zoning would allow. With a special permit they are looking to capture that value but do it in a manner that is less intrusive and less impact to the neighborhood. He feels his proposal does that. Mr. Olson read the ZBA decision. They clearly granted the 16 units which, in his view, gives him a higher density than what the zoning bylaw would otherwise have allowed with the 10,000 square feet per unit zoning bylaw; it would have allowed 6; they received permission to have 16. One question he has about this proposal is the fact that there are eight buildings on one lot, whereas presently there are two and believes the ZBA may have included a third building. He asked Mr. Peznola's thoughts since there is a section in the bylaw that says you cannot have more than one habitable building on a lot and they are going from the current two to eight in their proposal. Mr. Peznola said it is currently a non-conforming lot. He said that the whole notion of change, alteration, modification of a non-conforming lot is to allow a different configuration to take from one, change it to another with the limitation that it is not more detrimental to the neighborhood, as noted in Chapter 40A Section 6. He said the ZBA Chair stated "I am not concerned with the number of buildings, I am concerned with the impact to the neighborhood", so in the decision it is silent on what the number of buildings are. If the ZBA felt strongly about that, it would have been conditioned. They argue that it meets the spirit of the decision of the ZBA. Mr. Olson's understanding of the standard around determining what is non-conforming and the ZBA can allow a non-conforming use or non-conformity to continue into the future, but it can't be made more non-conforming. He is interpreting it as going from 2 buildings to 8 buildings on one lot. To him it seems clearly it is an increase in the non-conformity, and the ZBA's decision did not grant that. Mr. Peznola said they would look to the interpretation of the Zoning Enforcement Officer with regards to that. They never put a plan on the table before the ZBA. He has to agree that they comply with zoning. Mr. Olson said because there is a special permit you are asking for from this board for this application, one of the standards is making sure they are in compliance with all of the town's zoning bylaws. The Building Inspector, Bentley Herget, was present and he responded that he believes that the interpretation presented of the specific bylaws is appropriate, but he will review the issues and issue a written decision.

The Planning Board's review engineer, Wayne Amico (VHB), submitted a letter today to the board which Mr. Peznola has not had a chance to respond to. In it he said we need

clarification/interpretation of the non-conforming conditions that apply. Mr. Herget said in the zoning special permit it says “the board may grant special permits after a public hearing only where such conditions and safeguards as required by this by-law have been made, and only after a determination that such grant would not be detrimental to the public health, safety, welfare, comfort or convenience of the community, would not be adverse to the town’s economy and environment and is in harmony with the intent and purpose of this by-law”. He does feel that the ZBA gave the condition on the number of units. They were silent on the number of bedrooms and the number of buildings. He feels that the plan provided is much cleaner and much less detrimental to the town and more beneficial than the motel because the building will be assessed higher than a 3 or 4-unit condo building. They look better in his opinion. Mr. Olson asked if he thought this would benefit their overall neighborhood as well. Mr. Herget said he does. Bottom line, he is in favor of it. Mr. Vignaly commented about the increase in taxes associated with the development and said though there would be more taxes, the cost of community services will likely outweigh the increased income due to the cost associated with the schools. Having three bedrooms will be a drain on town services. He would be looking to for a reduction to the building units (or downsized to two bedroom units) or some other way to reduce the anticipated cost. Mr. Peznola said they were many discussions about the number of bedrooms. They were proposing that all 24 units have 3 bedrooms based on the fact that there are 42 bedrooms on site today, the potential for there to be a combination of 3s and 2s that equal 42 is possible. Mr. Peznola said at the time the reduction came and the agreement was made for 16 units, the question was raised by the ZBA about description and bedrooms. At that time they said they would not agree to that at the ZBA meeting. Mr. Peznola said they are approved for 16 units without restrictions. The discussion about it being more detrimental was clearly with that board. The comparison was the motel. That comparison is what the statute requires you to do. It is not that you look at the surrounding neighborhoods. You are comparing the two uses and the relative detriment. The language in the statute says it can’t be more detrimental. Mr. Olson said it can’t be more non-conforming either. Mr. Peznola said that language is not in the decision criteria. What is needed is the Building Inspector’s opinion in writing to the board as to whether we comply or not with zoning. Mr. Vignaly said the motel is an existing non-conforming use, those are only held for two-year time frame from the last time it was used. When was that? Mr. Peznola said the information was reviewed by Mr. Herget and he told the ZBA that it was his opinion that it was a legal non-conforming use and entitled to the special permit.

Mr. Olson said we have before us an application for a special permit for the use of a multi-family with more than 4 units. Mr. Frieden asked if we are more concerned with useable property and fitting into the town or are we more concerned with the number of structures relative to the ZBA’s decision that was silent on how many structures and bedrooms. Mr. Olson said the PB cannot waive zoning requirements, and therefore need to make sure zoning is complied with. There are two different ways to do that, one is to comply with all the bylaws, or you get special permission to go above the zoning bylaws and they have done at least a part of that. The question is, did they get enough of the extra permission from the ZBA coupled with everything else that they need to comply with zoning so the PB can approve the plan that is being submitted. Mr. Peznola said the ZBA decision has been rendered, there was no appeal, it is recorded and in full force and binding. With regards to who makes the interpretation on zoning issues, whether or not this is in compliance, relies on the Zoning Enforcement Officer. If the Zoning Enforcement Officer was to say he doesn’t believe it is, and they don’t agree with that, they could file an administrative appeal. Mr. Olson said we need to look at the ZBA decision, what non-conformance was granted through that decision, and is that enough to justify any non-

conformities with this plan, or are there others that were not addressed that were effectively granted to them previously. We need to look at what issues we may have or if more information is needed.

Mr. Frieden asked about the subsurface drainage. Mr. Peznola explained the parking lot and said it is pitched, there are catch basins that pipe the drainage into the subsurface system. He explained the wetlands and said there is existing pavement they will be taking out. Starting 8' above the parking lot and 8' below to the backyard is where the system will be. Mr. Peznola said they are incorporating trees in the landscaping plans to break it up and will plant trees up the hill, coming down in, and provide residential style lighting. They need to look at snow storage. Wayne Amico said regarding zoning, his interpretation is that if the board feels that this does not comply with zoning, then an interpretation is needed. The applicant needs to confirm that the interior landscaping in the parking area meets the 5% minimum criteria. There is a retaining wall that will need to be discussed with the Building Inspector. The Stormwater Checklist needs to be provided. Groundwater separation for the stormwater treatment system needs to be discussed further after Mr. Peznola reviews VHB's review letter. The drainage shall be designed to treat the 1" water quality volume. Hydraulic calculations need to be provided. The applicant used rainfall data from TP-40 which has been superseded by NOAA Atlas 14. They need to make sure the stream located is not jurisdictional for the DCR. Confirm if the units are owner-occupied or rentals. Identify accessible curb ramps where needed. Provide a fire apparatus access plan to the Fire Department for review and approval. Sight distance needs to be documented. Confirm the capacity of the sewer pump station. Mr. Peznola said they have nothing on the original design or as-built. They will have to have the sewer station pumped to see what is needed. Mr. Frieden asked about rubbish removal. Mr. Peznola said there will be a private hauler who provides individual 94-gallon roll-outs; no dumpsters. There will be condo rules to provide the common pick-up locations. Mr. Vignaly said we will need documents for the Operation & Maintenance Plan for the drainage system and sewer system. Mr. Peznola said they are required to establish a condominium association. He will provide draft documents.

Tim Brown (86 Sterling Street) felt the drainage will be better. Will they share any utilities? Mr. Peznola said the gas line, but there is already an easement. They do not share sewer. Mr. Brown asked about the shared road. Will it be repaved? Yes. The cut-through road is a safety issue. He asked if there could be a barrier put in. Mr. Vignaly said it is on their property and the owner can put one up without PB approval. Mr. Amico asked what is the purpose of the road? Mr. Brown said it separated them from the motel. Mr. Vignaly said as long as you have 24' down to the last parking spaces, you can stop it there. Mr. Olson said the Fire Department approved the proposal and confirmed the driveway is used as a cut-through. The Police Department approved the proposals, the Water District provided comments and the Municipal Light Plant provided comments as well.

Joe Campos (Angell Brook) would like to see the project proceed. He felt if it is engineered properly and meets town requirements it would be a plus for the town. Ted Ellis (abutter at 63 Lancaster Street) asked about putting a fence between the properties for separation. Mr. Peznola agreed. Dave Femia (86 Sterling Street) said the reason the driveway from Route 110 was put in was for the motel. On the plans, they are eliminating one of the driveways which leaves only one way for fire trucks to come in. He asked if there would be a fence in the back separating the properties. Mr. Peznola will add that to the plan.

Mr. Olson said we can reach out to the Building Inspector with specific inquiries as to which parts of the bylaw we need an interpretation on for this project including the number of habitable buildings, particularly in the context of the written ZBA decision, is it an expanded non-conformity going from two buildings to eight, and the number of bedrooms. Mr. Olson said to the Building Inspector that he talked about the standard of not being more detrimental to the neighborhood, so could he interpret those sections of the bylaw meaning the number of structures (the 16 units each with 3 bedrooms); is that a problem with the not more detrimental to the neighborhood standard in his interpretation. Mr. Peznola feels the Zoning Board understood it, acted upon it and gave them the relief needed to move forward. He will provide a response letter to VHB and revised plans. Mr. Olson will email the Building Inspector with the specific list of interpretations needed.

Mr. Frieden made a motion to continue the Public Hearing to January 11, 2017 at 8:00 p.m.; Ms. Carlson seconded; all voted in favor; motion approved.

Date Accepted: _____

By: _____
Vincent Vignaly, Clerk

Submitted by: _____
Melanie Rich